Supreme Court, U.S.
FILED
JUN 4 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1043

# In the Supreme Court of the United States

OCTOBER TERM, 1987

UNITED STATES OF AMERICA, PETITIONER

*v.*

RON PAIR ENTERPRISES, INC.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

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## QUESTION PRESENTED

Whether Section 506(b) of the Bankruptcy Code (11 U.S.C. (& Supp. IV)) entitles a creditor to receive post-petition interest on an oversecured claim allowed in a bankruptcy proceeding.

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## BRIEF FOR THE UNITED STATES

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 828 F.2d 367. The opinion of the district court (Pet. App. 15a-16a) is unofficially reported at 86-2 U.S. Tax Cas. (CCH) ¶ 9642. The opinions of the bankruptcy court (Pet. App. 17a-19a, 20a-24a) are unreported.

### JURISDICTION

The judgment of the court of appeals (Pet. App. 13a-14a) was entered on September 4, 1987. On November 24, 1987, Justice Scalia extended the time for filing a petition for a writ of certiorari to and including December 24, 1987. The petition was filed on December 21, 1987, and was granted on March 21, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTE INVOLVED

Section 506 of the Bankruptcy Code (11 U.S.C. (& Supp. IV)) provides:

**Determination of secured status**

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—



(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

## STATEMENT

1. Section 506 of the Bankruptcy Code (11 U.S.C. (& Supp. IV)) concerns the treatment of secured claims in bankruptcy proceedings. Section 506 was enacted, together with the rest of the Bankruptcy Code, in the comprehensive overhauling of the bankruptcy laws accomplished by the Bankruptcy Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549. Section 506(b) addresses circumstances in which a claim against the bankruptcy estate is "oversecured," *i.e.*, the situation where the value of the property constituting the security exceeds the amount of the allowed secured claim (together with certain administrative costs of preserving or disposing of the property for the creditor's benefit). In the case of an oversecured claim, "there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose" (11 U.S.C. (Supp. IV) 506(b)).

2. On May 1, 1984, respondent petitioned the United States Bankruptcy Court for the Eastern District of Michigan for a reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. (& Supp. IV) 1101 *et seq.* The government filed a timely proof of claim for $53,278 in assessed and unpaid withholding and social security taxes, penalties, and interest that had accrued prior to the filing of the petition in bankruptcy. The claim was secured by tax liens on property owned by respondent for which

notice had been properly filed. The parties stipulated that the value of the collateral securing the tax claim was sufficient to pay this claim, along with any post-petition interest that was due on the claim. Pet. App. 2a.

On October 1, 1985, respondent filed its First Amended Plan of Reorganization. This plan provided for the payment of the government's claim, including the portion allocable to pre-petition interest, but it did not provide for the payment of post-petition interest on that claim. The government filed a timely objection to the plan, arguing, inter alia, that Section 506(b) entitled it to receive post-petition interest on its oversecured claim. Pet. App. 2a. The bankruptcy court confirmed the plan (*id.* at 20a-24a), but it reserved for resolution in a future order the question whether the government was entitled to post-petition interest (see *id.* at 23a).

3. Subsequently, the bankruptcy court denied the government's objection and ordered that the plan could be completed without payment of post-petition interest to the government (Pet. App. 17a-19a). The court relied upon case law that had developed in the lower courts prior to the enactment of the Bankruptcy Code, *i.e.*, under the Bankruptcy Act of 1898, ch. 541, 30 Stat. 544. Several court of appeals cases had held that the Bankruptcy Act did not require the payment of post-petition interest on nonconsensual liens, *i.e.*, liens that were not voluntarily established by the debtor. See, *e.g.*, *In re Kerber Packing Co.*, 276 F.2d 245 (7th Cir. 1960); *United States* v. *Bass*, 271 F.2d 129, 131-132 (9th Cir. 1959). The bankruptcy court stated that it saw "no reason to deviate from the sound reasoning of the various Courts of Appeal that have already disposed of this issue" (Pet. App. 18a). Because a federal tax lien is a nonconsensual lien, these old court of appeals cases meant that the United States was not entitled



to recover post-petition interest on its oversecured claim, and the bankruptcy court so held.

The district court reversed (Pet. App. 15a-16a). The court held that "the plain language of Section 506(b) entitles the United States to such post-petition interest" (Pet. App. 16a). The court further stated that this interpretation of the new Bankruptcy Code had been upheld by two courts of appeals, citing *In re Best Repair Co.*, 789 F.2d 1080 (4th Cir. 1986), and *In re Colegrove*, 771 F.2d 119 (6th Cir. 1985) (Pet. App. 16a).

4. The Sixth Circuit reversed and reinstated the order of the bankruptcy court, holding that Section 506(b) does not require that post-petition interest be paid on oversecured claims that are founded upon nonconsensual liens (Pet. App. 1a-12a). The court first "reject[ed] the Government's contention that pre-Code law should not be relied on in interpreting section 506(b) since the provision appears to be unambiguous" (Pet. App. 4a). Citing this Court's decisions in *Kelly* v. *Robinson*, No. 85-1033 (Nov. 12, 1986), and *Midlantic Nat'l Bank* v. *New Jersey Dep't of Envtl. Protection*, 474 U.S. 494 (1986), the court stated that the Bankruptcy Code provision should be interpreted with reference to pre-Code law "in order to better understand the context in which the provision was drafted and therefore the language itself" (Pet. App. 4a-5a). The court of appeals then proceeded with an extensive discussion of pre-Code law. It noted that the courts had established a general rule, based on equitable principles, that interest ceased to accrue on the date the petition was filed. The courts had also developed some exceptions to this rule, including an exception allowing post-petition interest when the claim involved was oversecured. But, the Sixth Circuit continued, four courts of appeals had held that this exception did not apply to nonconsensual liens, such as tax

liens. The court noted that two reasons that had been given for this distinction were that in the case of a consensual lien the parties had bargained for security with respect to interest, and that tax liens often applied to all of the debtor's property, whereas consensual liens attached only to one asset. Pet. App. 5a-7a.

The court then held that "the language of section 506(b), when read in light of the pre-Code judicially created doctrine, codifies the pre-Code law on the issue of allowable postpetition interest" (Pet. App. 10a). Relying on the lack of any legislative history specifically addressed to this point (*id.* at 12a) and "the rule of statutory construction enunciated in *Midlantic* and *Kelly*" (*id.* at 10a), the court of appeals found that the language of Section 506(b) did not evince an unambiguous intention to reject the pre-Code judicially-created doctrine (Pet. App. 10a-12a). The court concluded that if Congress intended to depart from pre-Code law in Section 506(b), "such an intent must be expressed explicitly and not through the ambiguous use of a comma and the words 'and any' " (*id.* at 12a).[1]

## SUMMARY OF ARGUMENT

A. The natural reading of Section 506(b) is that it entitles all holders of oversecured claims to receive postpetition interest. The text, grammatical structure, and context of the provision all strongly indicate that Congress intended to confer upon the holders of oversecured claims the right to recover two different categories of payments—

[1] The court of appeals disavowed (Pet. App. 4a n.2) as dicta its prior statement that Section 506(b) "provides for interest on all allowed secured claims where the value of the security is greater than the claim" (*In re Colegrove*, 771 F.2d at 122).



"interest on such claim" and "any reasonable fees, costs, or charges provided for under the agreement under which such claim arose." The legislative history also indicates that Congress viewed interest as a type of payment distinct from the other kinds listed in the provision.

By contrast, the court of appeals' suggested reading—that the qualifying clause "provided for under the agreement" modifies not only the last antecedent phrase but also "interest," the earlier antecedent that is set off by a comma and a conjunction—"strains the plain meaning of the language and grammar of [Section 506(b)]" (*In re Best Repair Co.*, 789 F.2d 1080, 1082 (4th Cir. 1986)). The court of appeals' reading reduces Section 506(b) to a provision that applies only to the holders of claims secured by consensual liens and that does not apply at all to the holders of other kinds of secured claims. That reading is at odds with the broad language of the provision and its placement in Section 506(b), which is the "basic Code provision" governing all secured claims (see 3 *Collier on Bankruptcy* ¶ 506.01, at 506-02 (L. King 15th ed. 1988)). Moreover, if such had been Congress's intent, it is not apparent why the drafters did not use the method repeatedly used elsewhere in the Code to limit the application of provisions to consensual liens—namely, using the phrase "security interest," which is the term of art defined in the Code to cover a "lien created by an agreement" (11 U.S.C. (Supp. IV) 101(45)).

B. The basic rule of statutory construction is that the plain meaning of a statute should be followed, except in "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982). There is clearly no reason in this case to depart from the natural meaning of Section 506(b).

The provision is specifically directed at the question presented here, the treatment of secured claims, and therefore there is no reason to believe that Congress was unaware that the plain language of the statute would confer the right to post-petition interest upon all holders of oversecured claims. There is nothing inherently unreasonable about such an approach, which simply treats all secured claims equally with respect to interest. Indeed, that approach accords with Congress's general intent to design rules based on the classification of claims, rather than creditors, as secured, and to ensure that the holders of such claims do "not have [their] collateral eroded by delay" (H.R. Rep. 95-595, 95th Cong., 1st Sess. 181 (1977)).

It is true that several court of appeals cases decided under the pre-Code regime, when there was no statutory provision addressed to post-petition interest, had ruled, on the basis of equitable principles, that such interest was available only on claims oversecured by consensual liens, and thus would not be available on a claim secured by a mechanic's lien or on a government claim secured by a tax lien. But there is no reason to believe that Congress intended to codify those decisions in Section 506(b). The justifications that were given in those cases for distinguishing between nonconsensual and consensual liens have been substantially undermined by changing commercial practices. Consensual liens today are no longer restricted to a specific asset, but often extend to virtually all of a debtor's assets and therefore cannot be distinguished from tax liens on that ground. And the changes made by the Federal Tax Lien Act of 1966, Pub. L. No. 89-719, 80 Stat. 1125, substantially improve the availability to creditors of notice of federal tax liens and thereby help ameliorate the concern that other creditors will be unwittingly disadvantaged by the payment of interest on claims secured by tax liens.



Thus, it is highly questionable whether "equitable principle[s]" (Pet. App. 6a) today would support a distinction between consensual and nonconsensual liens, and there is certainly no reason to adhere to such a distinction in the face of a directly contrary statutory provision. The Bankruptcy Code was designed to be a comprehensive revision of the bankruptcy laws in order to modernize them in accordance with changes in the economic and legal landscape. Because of the changes in the premises that underlay the asserted justifications for the pre-Code distinction between consensual and nonconsensual liens, it is to be expected that Congress in 1978 would have regarded that aspect of prior law as a prime candidate for revision, not codification.

Finally, to the extent that a "specific" expression of congressional intent is needed to enact a departure from pre-Code law (see *Midlantic Nat'l Bank* v. *New Jersey Dep't of Envtl. Protection*, 474 U.S. 494, 501 (1986)), that standard is surely met here. The plain meaning of Section 506(b) constitutes a "specific provision in the text of the statute" (*United Savings Ass'n* v. *Timbers of Inwood Forest Associates, Ltd.*, No. 86-1602 (Jan. 20, 1988), slip op. 13) indicating an intent to change the pre-Code rule. When the statute is specifically directed to the subject of that rule and it was a central subject of the bankruptcy revision, the absence of an express confirmation in the legislative history of an intent to change pre-Code law provides no reason to doubt that the plain meaning of the statute, uncontradicted by the legislative history, reflects congressional intent.

## ARGUMENT

### SECTION 506(b) OF THE BANKRUPTCY CODE ALLOWS THE HOLDER OF ANY OVERSECURED CLAIM TO RECEIVE POST-PETITION INTEREST

In 1978, Congress enacted a new Bankruptcy Code as a comprehensive revision of the Nation's bankruptcy laws. The new Code made many significant changes in the law as it had developed under the Bankruptcy Act of 1898. Among other things, the new Code sought to define creditors' rights more explicitly than had the old Bankruptcy Act. Section 506 of the Code is the general section that governs the definition and treatment of secured claims. Section 506(b) specifically describes the amounts that may be received by a creditor who holds an "oversecured" claim, *i.e.*, a claim secured by property the value of which exceeds the amount of the claim and the necessary administrative costs incurred by the trustee in connection with preserving or disposing of the property. Section 506(b) provides that the holder of an oversecured claim shall be allowed to recover "interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose."

As the Fourth Circuit held in *In re Best Repair Co.*, 789 F.2d 1080 (1986), the text of Section 506(b) plainly states that the holder of an oversecured claim is entitled to receive post-petition interest on that claim. Accordingly, in this case, where it was stipulated that the value of the property subject to the federal tax lien exceeds the amount of the government's claim for delinquent taxes together with any necessary administrative costs and post-petition interest, Section 506(b) is directly applicable and provides that the government shall be allowed to receive post-petition interest on its oversecured claim. The court of appeals below, however, held to the contrary. The court



found that the judicially-created rule under the old Bankruptcy Act, which was based on "equitable principle[s]" (Pet. App. 6a), would not have permitted the government to recover post-petition interest on a claim secured by a federal tax lien because the government had not bargained to secure the interest by means of a contract with the debtor. Because Congress in 1978 did not express an intent in the legislative history to change the law that had developed in the courts of appeals on this point, the court ruled that it would not construe Section 506(b) to change the prior judicially-created rule. Instead, the court held that Section 506(b) should be construed to codify that prior rule—by applying the qualifying phrase "provided for under the agreement under which such claim arose" to the express statutory allowance of interest. Thus, the court held that Section 506(b) allows the holders of oversecured claims to recover post-petition interest only when the lien securing the claim was one created in a contract with the debtor.

The court of appeals below clearly erred in reaching this conclusion. There is no reason to reject the plain import of the text of Section 506(b) in favor of the strained reading suggested by the court of appeals. The Bankruptcy Code was intended as a comprehensive revision of prior law, and therefore the apparent meaning of its provisions should not be disregarded simply because applying that plain meaning would lead to a departure from a prior rule created by the courts of appeals at a time when there was no statutory provision explicitly addressing the issue. That is particularly true where, as here, the factors that formed the primary basis for the prior judge-made rule are no longer significant because of changes in the law and in lending practices. It is precisely because of changes like these in the legal and commercial landscape that Congress

found it necessary to embark on a major project to modernize the bankruptcy laws in a comprehensive fashion and thereby eliminate old doctrines that were not responsive to current conditions. In the absence of any evidence that the plain meaning of the language of the new Code deliberately chosen by Congress does not reflect its intent, disregarding that logical interpretation, in favor of principles developed by the courts under the bankruptcy system that Congress discarded as obsolete, undermines Congress's goals and purposes in overhauling the bankruptcy laws.

### A. The Text Of Section 506(b) Plainly Provides That The Holder Of Any Oversecured Claim Is Entitled To Receive Post-Petition Interest

#### 1. *The statutory background*

The enactment of the Bankruptcy Code in 1978 was the culmination of almost 10 years of study and investigation by Congress directed to the goal of comprehensively revising the Nation's bankruptcy laws. The 1978 legislation made significant changes in both the substantive and procedural law of bankruptcy. See *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 52-53 (1982). "The major purpose" of the legislation was "the modernization of the bankruptcy laws." H.R. Rep. 95-595, 95th Cong., 1st Sess. 3 (1977). As Congress explained in the legislative history, "[t]he substantive law of bankruptcy and the current bankruptcy system was designed in 1898, in the horse and buggy era of consumer and commercial credit, and was last overhauled in 1938, nearly 40 years ago" (*ibid.* (footnote omitted)). See also S. Rep. 95-989, 95th Cong., 2d Sess. 1 (1978).

The modernization of the bankruptcy laws in 1978 was designed to address both debtors' and creditors' rights. Congress noted that the new Code "codifies creditors'



rights more clearly than the case law"; specifically, it "defines the protections to which a secured creditor is entitled, and the means through which the court may grant that protection." H.R. Rep. 95-595, *supra,* at 4-5 (footnote omitted). As described in the legislative history, "[o]ne of the more significant changes from current law [was] the treatment of secured creditors and secured claims," namely, "distinguish[ing] between secured and unsecured claims, rather than between secured and unsecured creditors" (*id.* at 180 (footnote omitted)). To that end, Congress determined that the amount of the claim and the value of the property securing it must be compared. If the latter exceeds the former, the claim is oversecured and the creditor must be protected for the full value of his claim; if the amount of the claim exceeds the value of the property securing it, however, then the claim is secured only to the extent of the value of the property and the balance is treated as an unsecured claim. See 11 U.S.C. 506(a); see generally H.R. Rep. 95-595, *supra,* at 181.

Section 506, the provision at issue here, is titled "Determination of secured status" and is "the basic Code provision governing the determination of the secured status of allowed claims" (3 *Collier on Bankruptcy* ¶ 506.01, at 506-2 (L. King 15th ed. 1988)). Section 506 reflects this major change in the bankruptcy system towards treatment of creditors' rights in terms of classifying claims, rather than creditors, as secured, and it directly addresses some of the questions of creditors' rights that had been left to judicially-created "equitable principle[s]" (Pet. App. 6a) under the old Bankruptcy Act. Section 506(a) defines the amount of the secured creditor's allowed secured claim as limited by the value of the creditor's interest in the estate's property that is subject to the lien. Section 506(b) provides that, when a claim is oversecured, "there shall be allowed to the holder of such claim, interest on such claim,

and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose."[2] Section 506(c) provides that the trustee may recover from property securing an allowed claim reasonable expenses of preserving or disposing of the property for the creditor's benefit; these expenses are considered in determining whether the claim is oversecured under Section 506(b). And Section 506(d) provides the general rule, with certain exceptions, that a lien securing a claim is void if the claim is disallowed.

### 2. *The plain terms of Section 506(b) confer upon the holder of any oversecured claim the right to receive post-petition interest*

The issue presented here is whether the holder of an oversecured claim, in this case the government, is entitled to post-petition interest on the claim. Resolution of this issue is directly governed by Section 506(b), which, in the words of this Court, "defines * * * the conditions of [a secured creditor's] receiving postpetition interest" (*United Savings Ass'n* v. *Timbers of Inwood Forest Associates, Ltd.*, No. 86-1602 (Jan. 20, 1988), slip op. 5). And the text of Section 506(b) provides a clear answer to that question because its plain language, its grammatical structure, and its context all indicate that the holders of all oversecured claims are entitled to receive post-petition interest.

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[2] The word "for" in the final phrase of Section 506(b) was added by Section 448(a) of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, Tit. III, 98 Stat. 374. The original statutory language in the 1978 enactment was "provided under the agreement under which such claim arose." This 1984 amendment was described in the legislative history as a "stylistic change." S. Rep. 98-65, 98th Cong., 1st Sess. 79 (1983); see 3 *Collier on Bankruptcy* ¶ 506.03, at 506-14 (L. King 15th ed. 1988).



Section 506(b) first defines the class of claims to which it applies, namely, claims that are "oversecured," which means that the value of the property constituting the security exceeds the amount of the claim and the recoverable costs of preserving the property (§ 506(c)). Section 506(b) then describes the additional payments that the holder of such a claim is entitled to receive, namely, "interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose." The natural reading of the provision is that it permits all holders of oversecured claims to collect post-petition interest and, in addition, reasonable fees and costs provided for in the agreement giving rise to the claim. The latter portion of the provision thus sets up two distinct categories of payments to which the holder of the claim is entitled—post-petition interest, which is unqualified, and other fees, costs, and charges, which are qualified by the requirements that the payments be "reasonable" and that they be provided for in the agreement under which the claim arose.

Analysis of the grammatical structure of the provision supports this natural reading of the statute. The authorization to pay interest on the claim appears designed to stand independently; it is separated from the remaining portion of the statute both by a comma and by the conjunctive phrase "and any." The comma and the conjunctive phrase together act to separate the phrase "interest on such claim" as one that can stand alone and to introduce a second category of payments allowed to the holders of oversecured claims, namely, "reasonable fees, costs, or charges provided for under the agreement under which such claim arose." See *In re Best Repair Co.*, 789 F.2d 1080, 1082 (4th Cir. 1986). This grammatical structure is at odds with the court of appeals' apparent reading of the

statute—namely, that the final "provided for under the agreement" clause not only qualfies the "reasonable fees, costs, and charges" language, but also qualifies the allowance of interest (see Pet. App. 7a-9a). In the words of the Fourth Circuit in *Best Repair,* the interpretation adopted by the court of appeals here "strains the plain meaning of the language and grammar of the provision" (789 F.2d at 1082).

Indeed, the particular manner of drafting used by Congress at the end of Section 506(b) is a common one that has such a well-established meaning that it is generally regarded as rising to the level of a "maxim" of statutory construction. The "doctrine of the last antecedent" provides that "relative and qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to or including others more remote" (*Quindlen* v. *Prudential Insurance Co.*, 482 F.2d 876, 878 (5th Cir. 1973)). See generally 2A C. Sands, *Sutherland Statutory Construction* § 47.33, at 245 (4th ed. 1984). This rule had been variously described as "a fundamental tool of statutory construction" (*United States* v. *Ven-Fuel, Inc.*, 758 F.2d 741, 751 (1st Cir. 1985)) and as "one of the simplest canons of statutory construction" (*United States ex rel. Santarelli* v. *Hughes,* 116 F.2d 613, 616 (3d Cir. 1940) (internal quotation marks omitted)), and it is universally recognized as a significant indicator of legislative intent when construing a statute containing a qualifying phrase.[3] The doctrine of

[3] See, *e.g., Contrans, Inc.* v. *Ryder Truck Rental, Inc.*, 836 F.2d 163, 167-168 (3d Cir. 1987); *United States* v. *Correa,* 750 F.2d 1475, 1481 n.10 (11th Cir. 1985); *People of Illinois* v. *Consolidated Rail Corp.*, 589 F.2d 1327, 1332 (7th Cir. 1978), cert. denied, 442 U.S. 942 (1979); *Azure* v. *Morton,* 514 F.2d 897, 900 (9th Cir. 1975); *Mandina* v. *United States,* 472 F.2d 1110, 1112 (8th Cir.), cert. denied, 412 U.S. 907 (1973); *United States* v. *Pritchett,* 470 F.2d 455, 459 & n.9 (D.C. Cir. 1972). See also *FTC* v. *Mandel Bros.*, 359 U.S. 385, 389-390 (1959).



the last antecedent thus confirms that the natural reading of Section 506(b) is that the "provided for under the agreement" clause qualifies only the second category of payments allowed under the provision, namely, "reasonable fees, costs, or charges." The construction of Section 506(b) adopted by the court of appeals, by contrast, requires a strained reading of the statute because the drafters obviously separated interest from, rather than linked it with, the other allowed payments, and there is no indication that Congress intended to treat the two categories of payments the same in all particulars.[4]

As unlikely as the court of appeals' reading appears when one focuses on the language of Section 506(b), that reading becomes completely untenable when the provision is considered in its context in the Bankruptcy Code. Under the court of appeals' construction, *all* of the payments that Section 506(b) allows to holders of oversecured claims are ones provided for in the agreement under which the claim arose. Thus, Section 506(b) would have no application whatsoever to claims that are not secured by a lien created by agreement, *i.e.*, it would apply only to consensual liens. But the context in which Section 506(b) appears hardly indicates that the entire subsection was designed to be limited to a particular type of secured claim. Section 506 is the general section governing the determination of secured status, and each of its other subsections plainly applies to

[4] If the qualifying phrase is set off by itself with a comma, that is often regarded as an indication that the legislature intended that it not be tied to the immediately preceding phrase, but instead should also qualify earlier antecedents. See 2A C. Sands, *Sutherland Statutory Construction* § 47.33, at 245 (4th ed. 1984); *Bingham, Ltd.* v. *United States,* 724 F.2d 921, 926 n.3 (11th Cir. 1984). This technique was not used, however, in drafting Section 506(b).

all types of secured claims.[5] It is therefore quite incongruous to conclude that Section 506(b), which uses the same general terminology as the other subsections, was intended to apply only to consensual liens, not to all secured claims. Congress likely would have placed the provision elsewhere if it had intended to limit its application in that manner.

Moreover, if Congress had intended to limit the effect of Section 506(b) to consensual liens, it almost surely would have drafted it in a very different fashion. The concept of distinguishing consensual liens from other liens for certain purposes was one with which the drafters of the Bankruptcy Code were well familiar. The Code uses a specific term of art to represent what the court of appeals called consensual liens; a "security interest" is defined as a "lien created by an agreement" (11 U.S.C. (Supp. IV) 101(45)). When Congress wanted to restrict the application of a particular provision of the Bankruptcy Code to such liens, it routinely employed the term "security interest" in those provisions. See, *e.g.*, 11 U.S.C. (& Supp. IV) 362(b)(12) and (13), 363(a), 522(f)(2), 547(c)(3)-(5), 552, 752(c), 1110(a), 1168(a), 1322(b)(2). By the same token, the Code repeatedly makes express reference to special types of liens, such as "judicial liens" and "tax liens," when they are singled out for special treatment.[6]

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[5] The general applicablility of Section 506 to all types of secured claims is illustrated by the rejection, with the explanation that it was "not necessary," of a proposed amendment to Section 506(d) that would have explicitly stated that tax liens are included within its scope. See 124 Cong. Rec. 34014 (1978) (statement of Sen. DeConcini); *id.* at 32414-32415 (statement of Rep. Edwards).

[6] A "judicial lien" is defined as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding" (11 U.S.C. (101(27)). The term is used in several provisions where Congress specified separate treatment for such liens. See 11 U.S.C. (& Supp. IV) 522(f)(1), 544(a)(1), 547(d) and (e)(1)(B). "[S]tatutory liens" are defined as liens "arising solely by force of a statute on specified



Thus, it is exceedingly unlikely that Congress would have drafted Section 506(b) in the manner that it did if its intent was to limit the allowance of post-petition interest to the holders of consensual liens, but deny interest recovery to the holders of judicial and statutory liens. In sum, as the Fourth Circuit concluded in *Best Repair*, "the natural meaning of [Congress's] chosen words is to permit post-petition interest on nonconsensual oversecured claims" (789 F.2d at 1082 (footnote omitted)).[7]

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circumstances or conditions, or lien[s] of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute" (11 U.S.C. (Supp. IV) 101(47)). These liens are singled out by the Code for special treatment in some instances. See 11 U.S.C. (& Supp. IV) 545, 547(c)(6), 724(d). In addition, Congress used the term "tax lien" when it meant to specify special treatment solely for tax liens. See 11 U.S.C. (& Supp. IV) 522(c)(2)(C)(i), 724(b)(1)-(5).

[7] Most bankruptcy courts have reached the same result as the court of appeals in *Best Repair, i.e.*, permitting the holder of any unsecured claim to recover post-petition interest. These courts have considered tax liens, both state and federal (see, *e.g.*, *In re Brandenburg*, 71 Bankr. 719 (Bankr. D.S.D. 1987); *In re Busone*, 71 Bankr. 201 (Bankr. E.D.N.Y. 1987); *In re Gilliland*, 67 Bankr. 410 (Bankr. N.D. Tex. 1986); *In re Hoffman*, 28 Bankr. 503, 508 (Bankr. D. Md. 1983); contra, *In re Nevada Environmental Landfill*, 81 Bankr. 55 (Bankr. D. Nev. 1987); *In re Granite Lumber Co.*, 63 Bankr. 466 (Bankr. Mont. 1986); *In re Venable*, 48 Bankr. 853 (Bankr. S.D.N.Y. 1985)), and private nonconsensual lienholders, such as judicial and mechanic's lien claimants (see, *e.g.*, *In re Charter Co.*, 63 Bankr. 568 (Bankr. M.D. Fla. 1986); *In re Romano*, 51 Bankr. 813 (Bankr. M.D. Fla. 1985); *In re Morrissey*, 37 Bankr. 571 (Bankr. E.D. Va. 1984); *In re Bormes*, 14 Bankr. 895 (Bankr. D.S.D. 1981); see also *In re Loveridge Machine & Tool Co.*, 36 Bankr. 159, 162 (Bankr. D. Utah 1983); contra, *In re Dan-Ver Enterprises*, 67 Bankr. 951 (Bankr. W.D. Pa. 1986); *In re Trent*, 42 Bankr. 279 (Bankr. W.D. Va. 1984)). One other court of appeals and a leading commentator, however, have

### B. There Is No Basis For Concluding That The Plain Meaning Of Section 506(b) Does Not Represent The Intent Of Congress And Therefore No Reason For Construing The Section To Depart From That Plain Meaning

The basic rule of statutory construction is that the plain meaning of a statute should be followed, except in the "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982). See also, *e.g.*, *Randall* v. *Loftsgaarden,* No. 85-519 (July 2, 1986), slip op. 8; *United States* v. *Clark,* 454 U.S. 555, 560 (1982); *United States* v. *Turkette,* 452 U.S. 576, 580 (1981). This is not one of those rare cases. On the contrary, the court of appeals departed from the apparent meaning of the statutory language without any substantial basis for believing that the plain meaning did not reflect the intention of Congress.

#### 1. *The policies and legislative history of the Bankruptcy Code are fully consistent with Congressional intent to allow post-petition interest on all oversecured claims*

There is nothing inherently unreasonable in giving effect to the plain terms of Section 506(b) and allowing post-petition interest to the holders of claims that are oversecured by nonconsensual liens. Such a rule simply grants equal treatment to all secured claims with respect to post-petition interest. That approach is in accord with the broad congressional purpose of designing rules based on the classification of *claims* as secured or unsecured and

taken the position that Section 506(b) codifies pre-Code law and distinguishes between consensual and nonconsensual liens for purposes of receiving post-petition interest. See *In re Newbury Cafe, Inc.*, 841 F.2d 20 (1st Cir. 1988), petition for cert. pending, No. 87-1784; 3 *Collier on Bankruptcy, supra,* ¶ 506.05, at 506-41 to 506-44.



with the recognition by Congress that, once a claim is found to be secured, the "creditor is entitled to realize his claim, and not have his collateral eroded by delay" (H.R. Rep. 95-595, *supra,* at 181). Thus, there is no reason apparent on the face of the statute for doubting that allowance of post-petition interest to all holders of oversecured claims is in furtherance of Congress's intent.

The legislative history of Section 506(b) similarly gives no reason to doubt the plain meaning of the text; indeed, to the extent the legislative history bears on the matter at all, it generally supports the proposition that post-petition interest is available to all holders of oversecured claims. The portion of Section 506(b) allowing "interest on such claim" to oversecured creditors was contained in both the House and Senate versions of the bankruptcy reform legislation that was ultimately enacted by Congress. See H.R. 6, 95th Cong., 1st Sess. (1977); H.R. 8200, 95th Cong., 1st Sess. (1977); S. 2266, 95th Cong., 2d Sess. (1978); see generally 3 *Collier on Bankruptcy, supra,* ¶ 506.03, at 506-07 to 506-12. Because the final version of the statute contained the same language as that introduced in both the House and Senate bills, there were no changes in the course of the legislative process that could shed any light on the meaning of the allowance of interest. Moreover, neither the committee reports nor the statements by the managers of the legislation discuss the question of post-petition interest at all. See H.R. Rep. 95-595, *supra,* at 356; S. Rep. 95-989, *supra,* at 68; 124 Cong. Rec. 32398 (1978) (statement of Rep. Edwards); 124 Cong. Rec. 33997 (1978) (statement of Sen. DeConcini).[8] Thus, the legislative history does not bear directly upon the question of post-petition interest.

[8] Because of the expedited schedule under which the Senate and House versions were reconciled before the passage of the Bankruptcy Act of 1978, there was no formal conference, and a conference report

The final portion of Section 506(b), however, the segment dealing with "reasonable fees, costs, or charges," was changed during the drafting of the 1978 bankruptcy legislation and was the subject of some discussion in the committee reports. The original version of the bill introduced in the House in January 1977 referred to "fees, costs, or charges," but did not restrict those payments to reasonable ones. See H.R. 6, 95th Cong., 1st Sess. (1977). The later version that was introduced in the House and reported out of committee in September 1977 added the "reasonable" limitation, but that restriction was appended only to the final portion of the subsection to modify "fees, costs, or charges" (see H.R. 8200, 95th Cong., 1st Sess. (1977)), and the bill was eventually enacted in that form. See generally 3 *Collier on Bankruptcy, supra,* ¶ 506.03, at 506-7 to 506-8. This history suggests that Congress did not regard interest as linked to the other payments addressed in Section 506(b), but instead viewed them as two distinct categories. And it is logical to conclude that, just as the reasonableness limitation was designed to apply only to the second, non-interest, category of payments, so too the limiting "provided for under the agreement" clause was intended to apply only to the second category of payments, which is consistent with the manner in which Congress drafted Section 506(b). In short, there is nothing in the

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was not issued. Instead, the differences between the two versions were reconciled by the managers of the two bills, Rep. Edwards and Sen. DeConcini, and the explanation of the compromise is contained in statements made on the floor of each house by those two legislators. See generally Klee, *Legislative History of the New Bankruptcy Law,* 28 De Paul L. Rev. 941 (1979).



legislative history to indicate that the plain meaning of Section 506(b) does not reflect the intent of Congress.[9]

***2. The fact that the plain meaning of Section 506(b) deviates from a judge-made rule created under the old Bankruptcy Act in the absence of an applicable statutory provison provides no basis for doubting that the plain meaning reflects the intent of Congress***

The court of appeals based its strained reading of Section 506(b) almost entirely on the fact that applying the plain meaning would deviate from a line of court of appeals cases decided under the old Bankruptcy Act. At the outset, we note that the court of appeals' approach turns

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[9] The history of Section 506(b) involved a dispute over one issue that does not directly bear on the interest question, namely, whether recovery of the payments authorized thereunder depends upon state law. See generally *Unsecured Creditors' Committee* v. *Walter E. Heller & Co.*, 768 F.2d 580, 582-585 (4th Cir. 1985). Prior to the enactment of the 1978 legislation, state law governed the enforceability of attorney's fee agreements between oversecured creditors and bankruptcy debtors, and therefore an attorney's fee recovery under such an agreement might have been denied for failure to comply with some state law requirement, such as notice. See, *e.g., ITT-Industrial Credit Co.* v. *Hughes*, 594 F.2d 384, 387 (4th Cir. 1979). The House Ways and Means Committee amended the House bill before it was reported to the floor to include in Section 506(b) the qualifying phrase "to the extent collectible under applicable law" (see H.R. 8200, 95th Cong., 1st Sess. (1977)). The Senate bill contained no such language, and the Senate version emerged in the statute that was enacted. The managers explained that the House language had been rejected and that a security agreement providing for attorneys' fees will be enforceable "notwithstanding contrary law" (124 Cong. Rec. 32398 (1978) (statement of Rep. Edwards); 124 Cong. Rec. 33997 (1978) (statement of Sen. DeConcini)).

It is significant to note that the House Committee amendment that was ultimately rejected had inserted the state law language into Section 506(b) *before* the language allowing interest; the bill provided that "there shall be allowed to the holder of such claim, to the extent collectible under applicable law, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose" (H.R. 8200, *supra, reprinted in* 3

on its head the ordinary approach to statutory construction. The court did not find itself forced to look to judicially-created law under an obsolete statutory scheme because it concluded that Section 506(b) of the Code was undecipherable on its face. On the contrary, the court did not appear to dispute that Section 506(b) has a natural meaning, namely, that all holders of oversecured claims are entitled to recover post-petition interest. Rather, it was only in light of its review of pre-Code law that the court of appeals "discovered" that the language of Section 506(b) "is not unambiguous but is actually subject to more than one reasonable interpretation" (Pet. App. 11a). In sum, while it would have been unobjectionable for the court of appeals to examine pre-Code law "in order to better understand the context in which [Section 506(b)] was drafted and therefore the language itself" (Pet. App. 4a-5a), that is not what the court did. Instead, its reliance on pre-Code law amounts to an "effort to circumvent the plain meaning of the statute by creating an ambiguity where none exists" (*Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians,* 466 U.S. 765, 781 (1984)). Once the court of appeals examined pre-Code law, it decided that Section 506(b) must be construed to codify that law, without giving any further consideration to the plain import of the statutory language.

In fact, there is no reason whatsoever to believe that Congress intended to codify pre-Code law in Section 506(b), and the existence of a difference between that pre-Code law and the new rule established by the plain mean-

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*Collier on Bankruptcy, supra,* ¶ 506.03, at 506-8). Thus, it is apparent that the drafters of Section 506(b) were fully capable of making a qualifying phrase applicable both to interest and to other payments if they so desired, and therefore even this tidbit of legislative history supports the natural reading of Section 506(b) that was rejected by the court of appeals.



ing of S[illegible]tion 506(b) does not indicate that the latter is at odds with Congress's intent. The Bankruptcy Act of 1898, as amended, had no provision specifically addressing the types of additional charges, such as interest, that had to be allowed on secured claims. That issue therefore became the subject of judicially-created rules. The general rule was that the running of interest ceased when the petition in bankruptcy was filed (see, *e.g., City of New York* v. *Saper,* 336 U.S. 328, 337-338 (1949); *Vanston Bondholders Protective Committee* v. *Green,* 329 U.S. 156, 163 (1946)), but the courts of appeals generally recognized an exception to that rule when the claim was oversecured and therefore the value of the security was sufficient to satisfy both the claim and the post-petition interest. At the same time, several courts of appeals refused to apply this exception to nonconsensual liens, such as tax liens, arguing that post-petition interest should be available only to the holder of a consensual lien, where the creditor had bargained for security with respect to interest. See *In re Kerber Packing Co.,* 276 F.2d 245 (7th Cir. 1960); *United States* v. *Bass,* 271 F.2d 129 (9th Cir. 1959); *United States* v. *Harrington,* 269 F.2d 719, 724 (4th Cir. 1959); see also *In re Boston & Maine Corp.,* 719 F.2d 493 (1st Cir. 1983), cert. denied, 466 U.S. 938 (1984) (construing pre-Code law).[10]

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[10] The *Harrington* case does not truly endorse the distinction between consensual and nonconsensual liens that the Sixth Circuit read into Section 506(b). In fact, the court of appeals in *Harrington* expressed the view that an exception from the general rule against post-petition interest should not be recognized for any type of claim, even one oversecured by a consensual lien (269 F.2d at 722-723); that view, of course, has indisputably been rejected by Congress in Section 506(b). The court of appeals in *Harrington*, however, did add that, to the extent such an exception had been recognized by some courts, the exception should not be extended to the case of a nonconsensual lien

The court of appeals clearly erred in concluding that Congress intended to codify these cases in Section 506(b) and create a distinction between nonconsensual and consensual liens for purposes of recovery of post-petition interest. First, it is something of an exaggeration to characterize these cases as establishing a "rule" that could appropriately be codified. In relying upon equitable principles, this Court had stated that—in the absence, of course, of an applicable statute—"the touchstone of each decision on allowance of interest in bankruptcy, receivership and reorganization has been a balance of equities between creditor and creditor or between creditors and the debtor" (*Vanston Bondholders Protective Committee* v. *Green,* 329 U.S. at 165). Accordingly, the pre-Code principles governing post-petition interest were not regarded as "rigid doctrinal categories," but rather as "flexible guidelines" to be considered "in light of the nature of each claim and the equities of the case before it" (*In re Boston & Maine Corp.,* 719 F.2d at 496). Second, and more significantly, changes in commercial lending practices and in the law governing federal tax liens have almost completely undermined the reasons that had been advanced to support the pre-Code distinction between consensual and nonconsensual liens. Thus, to the extent Congress focused its attention at all on this pre-Code distinction, it would be expected to have regarded it as a prime candidate for revision, not codification.

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(269 F.2d at 723-724). The Sixth Circuit also cited *United States* v. *Mighell,* 273 F.2d 682 (10th Cir. 1959), but that case is inapposite. In *Mighell,* as the court of appeals there specifically noted, the government was not attempting to invoke any of the recognized exceptions to the rule against allowing post-petition interest out of the assets of the bankruptcy estate (see *id.* at 684 & n.2). Rather, the government was arguing that interest secured by a tax lien was not dischargeable and could be collected directly from the debtor.



One of the main reasons given in the pre-Code cases to justify the disparate treatment of consensual and nonconsensual liens was that the latter, especially in the case of tax liens, typically attached to all of the debtor's property, whereas a lien held by a private consensual creditor typically attached to a single asset. See Pet. App. 7a; *In re Kerber Packing Co.,* 276 F.2d at 247; *United States* v. *Bass,* 271 F.2d at 131; *United States* v. *Harrington,* 269 F.2d at 724. Whatever the merit of that justification when it was first advanced, its factual premise is not accurate under modern commercial lending practices. Today private lienholders do not necessarily limit their security to a single asset; indeed, it is not uncommon for consensual lienholders to secure their loans by obtaining a lien on virtually every asset owned by the debtor. See, *e.g., United States* v. *Security Industrial Bank,* 459 U.S. 70, 71 (1982); *Wegner* v. *Grunewaldt,* 821 F.2d 1317, 1319 (8th Cir. 1987); *Coral Petroleum, Inc.* v. *Banque Paribas-London,* 797 F.2d 1351, 1353 (5th Cir. 1986). Congress was well aware of this aspect of modern commercial lending practice when it enacted the 1978 bankruptcy legislation; for example, the House Report specifically noted that, "[f]requently, creditors lending money to a consumer debtor take a security interest in all of the debtor's belongings" (H.R. Rep. 95-595, *supra,* at 127).[11] Thus, the asserted difference between general and specific liens no longer provided justification in 1978 for a distinction between consensual and nonconsensual liens, and there was no reason for Congress to wish to codify that pre-Code distinction.

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[11] Indeed, concern over the effect of these types of blanket liens held by private consensual lienholders upon household goods gave rise to a special provision in the Bankruptcy Code directed at them. See 11 U.S.C. 522 (f)(2); *United States* v. *Security Industrial Bank, supra.*

The other difference that was frequently cited to justify the distinction between consensual and nonconsensual liens was the fact that in the former case the security for the interest had been "bargained for" by the creditor and debtor. See *In re Kerber Packing Co.*, 276 F.2d at 247; *United States* v. *Harrington*, 269 F.2d at 724. The purported significance of this distinction appears to have been that it would be inequitable not to allow the creditor the benefit of his bargain, including interest, but, in the absence of such a bargain, it would be inequitable to award interest at the expense of the unsecured creditors. Like the changes in commercial lending practices, however, changes in the rules governing federal tax liens have undermined the view that equitable principles weigh against permitting the government to recover post-petition interest that is allowed to a private secured creditor. The Federal Tax Lien Act of 1966, Pub. L. No. 89-719, 80 Stat. 1125, significantly changed the provisions for filing notices of federal tax liens in order "to increase the likelihood that creditors, generally, will receive notice as to taxpayers' standing with the Government" (S. Rep. 1708, 89th Cong., 2d Sess. 10 (1966)). See generally 26 U.S.C. 6323. These changes operate to assist unsecured creditors who previously might have been unavoidably disadvantaged by the payment of interest to the government because it enables them to protect themselves by determining whether notices of federal tax liens have been filed before deciding whether to extend credit to the debtor or whether to insist upon security.

Moreover, as Congress recognized in 1978 (see generally H.R. Rep. 95-595, *supra*, at 189-193), the government is, in important respects, less able to protect its position than a private creditor. As an involuntary creditor, it lacks the power to prevent further extensions of "credit" (in the form of unpaid taxes), nor can it easily enforce collec-



tion.[12] Finally, it is not apparent why it is equitable to enforce a private creditor's insistence on the payment of interest, but not to allow such interest to the government, when Congress has generally imposed liability for interest as part of the obligation for repayment by a taxpayer of money he has "borrowed" from the government by failing to pay his taxes on time. Thus, under modern practices, equitable principles lend little support to the distinction that had been recognized between consensual and nonconsensual liens in the pre-Code cases upon which the court of appeals relied.[13]

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[12] The House Report explained (H.R. Rep. 95-595, *supra*, at 193):

> [I]t is a frequent occurrence that the business will stop paying its taxes before it stops paying its other creditors, because the officers of the business know that detection of nonpayment is more difficult for the taxing authority than it is for a supplier or lender, and that an unpaid supplier quickly stops shipping goods, though an unpaid taxing authority is usually unable to take collection action for months.

[13] In its 1983 decision construing pre-Code law, *In re Boston & Maine Corp.*, *supra*, the First Circuit suggested another rationale for the old distinction between consensual and nonconsensual liens, but this justification is also insubstantial. The First Circuit characterized the payment of interest to the United States on delinquent taxes as an "enforcement device" and reasoned that it was inequitable to assist tax enforcement in that manner when the interest payment would come at the expense of lower priority creditors who are powerless to cause the prompt payment of taxes by the debtor. See 719 F.2d at 497. First, the premise of this rationale is erroneous. Liability for interest, which is designed to compensate the government for the loss of the use of money that should have been paid to the Treasury, cannot be equated with an enforcement device, such as a penalty. The interest rates on delinquent taxes are now based on short-term federal obligations (see 26 U.S.C. (& Supp. III) 1274(d) and 6621), and generally have always been more favorable than any rate at which the debtor could hope to borrow money on the open market; thus, it can hardly be regarded as "punitive." See, *e.g.*, *In re Levitt House, Inc.*, 72 Bankr. 18, 20 (Bankr. E.D.N.Y. 1987). Moreover, even penalties, which are sepa-

In sum, the pre-Code decisional law on post-petition interest provides no basis for doubting that the plain meaning of Section 506(b) reflects the intent of Congress. Those cases arose at a time when the courts understood the "fundamental" governing principle to be that post-petition interest is "normally denie[d]" (*United States* v. *Bass,* 271 F.2d at 132). Changes in commercial lending practices and tax lien statutes have undermined the rationale for such a restrictive rule, however, and Congress, in the course of a massive revision and modernization of the bankruptcy laws, has now enacted a statute specifically entitling oversecured creditors to such interest. That statute appears on its face to apply to all oversecured creditors, and there is no reason to believe that Congress, in using such general language, intended to codify pre-Code law and cover only "those exceptional situations" (*In re Boston & Maine Corp.,* 719 F.2d at 498) where the interest was provided for under a security agreement.

3. ***The absence of any legislative history specifically demonstrating an intent to change pre-Code decisional law provides no basis for departing from the plain meaning of Section 506(b)***

The court of appeals justified its heavy reliance on pre-Code law by referring to what it termed a "rule of statutory construction enunciated in" this Court's deci-

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rately treated under the Bankruptcy Code, are sometimes accorded priority status over the claims of some private creditors (see 11 U.S.C. (Supp. IV) 503(b)(1)(C), 507(a)(7)(G)). Second, the "enforcement device" argument proves too much because its logic suggests that the government should not even be able to collect *pre*-petition interest, which is clearly contrary to 11 U.S.C. (Supp. IV) 502(b)(2). Third, and most important, the court of appeals' suggested rationale furnishes no basis for distinguishing between consensual and nonconsensual liens. Just as general creditors are powerless to force the debtor to pay his taxes promptly, they are also powerless to prevent him from entering agreements to incur secured debt at high rates of interest. Yet the rule adopted by the court of appeals here would require the payment of post-petition interest in the latter situation, to the detriment of the general creditors.



sions in *Kelly* v. *Robinson,* No. 85-1033 (Nov. 12, 1986), and *Midlantic Nat'l Bank* v. *New Jersey Dep't of Envtl. Protection,* 474 U.S. 494 (1986) (Pet. App. 10a). The Court stated in *Midlantic* that, when "Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific" (474 U.S. at 501). The court of appeals below found that Congress did not act explicitly enough in enacting Section 506(b) to meet the test of making its intent "specific" and therefore pre-Code law must be deemed to have been continued in effect; the court appears to have reached this conclusion by relying principally, if not entirely, upon the fact that the legislative history of Section 506(b) does not state an intent to abrogate pre-Code law (see Pet. App. 12a). The court of appeals seriously erred in ascribing such significance to the absence of any legislative history discussing pre-Code law.

It is clear that *Midlantic* and *Kelly* do not establish a general rule requiring explicit statements in the legislative history to enact a new bankruptcy provision that deviates from pre-Code law. That would be inconsistent with the most basic principles of statutory construction. While legislative history ordinarily is useful in helping to construe a statute, it is not indispensable to determining a statute's meaning. As this Court has noted in construing the Federal Rules of Evidence, "[i]t would be extraordinary to require legislative history to *confirm* the plain meaning of a rule" (*Bourjaily* v. *United States,* No. 85-6725 (June 23, 1987), slip op. 6 (emphasis in original)), and the same is surely true of a statute. Plainly, "it would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a

statute" (*Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 592 (1980)).[14]

More generally, the court of appeals erred in finding that *Midlantic* and *Kelly* establish any general rule of construction that is applicable to this case and that casts any doubt upon the proposition that the plain meaning of Section 506(b) reflects the intent of Congress. The concern that this Court evinced in those cases for specificity on the part of Congress was a product of the particular context of those cases and has little bearing on the question presented here. Both *Midlantic* and *Kelly* involved the question of the impact of a general bankruptcy provision on important issues and policies outside the bankruptcy context. In both cases, it was not apparent that Congress had considered these nonbankruptcy effects in the course of the bankruptcy revision, and therefore the Court had reason to doubt whether Congress intended to depart from pre-Code decisional law. Those cases have little bearing here, however, where the Bankruptcy Code provision is specifically addressed to the issue at hand, and that issue is a core bankruptcy matter.

In *Midlantic*, the Court held that the Bankruptcy Code's provision generally authorizing the trustee to abandon property (11 U.S.C. (Supp. IV) 554(a)) did not give him the right to abandon property in contravention of state or

[14] The court of appeals' excessive preoccupation with the legislative history, rather than the text of the statute, is illustrated by its tangential discussion of the attorney's fees portion of Section 506(b). The court there mistakenly characterized the final statements on the floor of the House and Senate by the managers of the legislation as addressed to the differences between the language of the House and Senate *Reports* (see Pet. App. 12a n.11). These statements, of course, were in fact designed to explain the reconciliation of the differences in the *statutory text* in the House and Senate bills. See note 9, *supra*.



local laws designed to protect public health or safety. The Court explained that "[n]either the Court nor Congress has granted a trustee in bankruptcy powers that would lend support to a right to abandon property in contravention of state or local laws designed to protect public health or safety" (474 U.S. at 502). Indeed, the Court stated, Congress has "repeatedly expressed its legislative determination that the trustee is not to have *carte blanche* to ignore nonbankruptcy law," especially when issues of public health and safety are involved (*ibid.*). The Court also stated that there had been well-recognized restrictions on the trustee's abandonment power when Congress enacted Section 554(a) (474 U.S. at 500-501). Characterizing Section 554 as a "codif[ication of] the judicially developed rule of abandonment," the Court then stated that it was a normal rule of statutory construction, particularly in bankruptcy codifications, that Congress makes its intent specific if it intends to change the interpretation of a judicially-created concept (474 U.S. at 501). Finding that the exemption from state law sought by the trustee was an "extraordinary" one (*ibid.*), the Court concluded that an intent to establish such an exemption would have been expressly manifested by Congress.

In *Kelly*, the Court held that the Bankruptcy Code did not provide for the discharge of restitution obligations to crime victims that had been ordered by the state's criminal justice system. Citing *Midlantic*, the Court noted that the 1978 Code provision, which did not on its face make such obligations nondischargeable, was enacted "against the background of an established judicial exception to discharge for criminal sentences, including restitution orders" (*Kelly*, slip op. 9-10). The Court explained that this judicial exception had been established in the face of relatively "clear statutory language" (slip op. 8) that would have rendered such debts dischargeable, and therefore it

was reasonable to read the 1978 statute as embodying the same exception, rather than silently clashing with the "deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings" (*id.* at 10).

Thus, the Court's reliance on pre-Code law in both *Midlantic* and *Kelly* was triggered by special circumstances that are wholly absent here. Those cases involved the interaction between bankruptcy law and nonbankruptcy law, and a clash between competing policies and interests in the two areas. Specifically, the Court was faced with determining the effect of a fairly general bankruptcy law provision upon a question implicating important government interests unrelated to bankruptcy—state health and safety laws and the continued effectiveness of requirements imposed in state criminal proceedings. There was no reason for this Court to believe that these consequences were the focus of congressional attention during the drafting of the Bankruptcy Code.

Moreover, the Court found that the consequences of assuming that Congress intended to change previously-established law were quite significant. In *Midlantic,* the Court noted that changing the prior rule would have conferred an "extraordinary" power on the trustee to ignore the requirements of state health and safety laws—a power that appeared to be contrary to legislative determinations expressed repeatedly in the past by Congress (474 U.S. at 501-502). Similarly, in *Kelly,* the Court characterized the reading of the statute that would have made restitution obligations dischargeable as " 'so wasteful, so inimical to purposes previously deemed important, and so likely to arouse public outrage,' " that it was almost inconceivable that Congress would have enacted such a rule without a more explicit indication of intent (slip op. 13-14, quoting



*TVA* v. *Hill,* 437 U.S. 153, 209 (1978) (Powell, J., dissenting)). Thus, in both *Midlantic* and *Kelly* the Court did not depart from the literal meaning of the statute standing alone solely because the text pointed to a rule different from pre-Code decisional law; rather, the Court sought a more specific indication of congressional intent to change preexisting law because several factors led the Court to believe that it was exceedingly unlikely that Congress had intended to change that law.

This case, by contrast, involves a core matter in bankruptcy—the rights of secured creditors—that was a central subject of the 1978 revision of the bankruptcy laws. Moreover, the provision involved here is specifically directed at the question of recovery of post-petition items arising from oversecured claims. Thus, there is no reason to assume that the effect of the plain terms of Section 506(b) on the rights of the holders of oversecured claims is something that was not specifically contemplated by Congress. Nor is the result of applying those plain terms "extraordinary" or "inimical" to important public purposes; as we have shown (pages 20-21, 27-30, *supra*), there is every reason to expect the Congress that comprehensively revised the bankruptcy laws in 1978 to have done away with the pre-Code judicially-created distinction between consensual and nonconsensual liens. Accordingly, the conclusions in *Midlantic* and *Kelly* that pre-Code law had survived in the particular circumstances of those cases simply do not establish any general presumption applicable here that the Bankruptcy Code embodies pre-Code decisional law.[15]

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[15] The presumption that Section 506(b) should be construed to codify the pre-Code distinction between consensual and nonconsensual liens for purposes of post-petition interest is further undermined by the fact that other portions of the provision clearly do not codify pre-Code law. As we have noted, the pre-Code rule was that attorney's

In sum, the explicit terms of Section 506(b)—a statutory provision specifically directed to the resolution of the question presented—are plainly sufficient to meet any requirement that a "specific" congressional intention to abrogate pre-Code law be shown. At least where the question is a core bankruptcy matter, there is no reason to doubt that the natural meaning of the text of the statute reflects congressional intent, even in the absence of any specific legislative history. See *United Savings Ass'n* v. *Timbers of Inwood Forest Associates, Ltd.*, slip op. 13 (major change in existing rules would not likely have been made by the Bankruptcy Code "without specific provision in the text of the statute" (citing *Kelly* v. *Robinson, supra*)); see also *Palmer* v. *Massachusetts*, 308 U.S. 79, 85 (1939).[16] The absence of an explicit rejection of pre-Code

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fees could be recovered only in accordance with state law. The courts have uniformly held, however, that this rule was abrogated by Section 506(b). See *In re Hudson Shipbuilders, Inc.*, 794 F.2d 1051, 1056 (5th Cir. 1986); *In re 268, Ltd.*, 789 F.2d 674, 675-677 (9th Cir. 1986); *Unsecured Creditors' Committee* v. *Walter E. Heller & Co., supra*; see also *Mack Financial Corp.* v. *Ireson*, 789 F.2d 1083, 1084 (4th Cir. 1986) (noting that Congress did not intend to codify every detail of pre-Code law concerning the allowance of reasonable charges and instead disputes must be resolved by reference to the statutory text). The holding that pre-Code law was altered in this respect is supported by the statement of the managers reconciling the House and Senate versions, though the Senate Committee Report explaining the language that ultimately was enacted does not state any intent to abrogate pre-Code law. See generally note 9, *supra*.

[16] Indeed, this Court has implicitly recognized that the text of the Bankruptcy Code can be sufficient to show a specific intent to depart from pre-Code law in the absence of any expression of that intent in the legislative history. In *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198 (1983), the Court rejected the government's argument that it did not have to turn over to the estate, under 11 U.S.C. 542(a), property that had been seized by means of a pre-petition tax levy. The Court recognized (462 U.S. at 206 n.13) that pre-Code law had recog-



law in the legislative history of Section 506(b) furnishes no basis for concluding that application of the plain meaning of that provision (uncontradicted by anything in the legislative history) "will produce a result demonstrably at odds with the intentions of its drafters" (*Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. at 571).

## CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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JUNE 1988

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nized in a Chapter 7 case that the government was not required to turn over property that it had seized by a pre-petition levy because that property was not subject to the bankruptcy court's jurisdiction (see *Phelps* v. *United States*, 421 U.S. 330 (1975)), but it concluded that this previously-established limitation was now "irrelevant because of the expanded jurisdiction of bankruptcy courts under the Bankruptcy Code" (462 U.S. at 210 n.18). Nothing in the Bankruptcy Code or the legislative history, however, had specifically expressed an intent to depart from the rule embodied in *Phelps*. The court nonetheless held that "[t]he Service is bound by § 542(a) to the same extent as any other secured creditor" (462 U.S. at 209).

☆ U.S. GOVERNMENT PRINTING OFFICE: 1988—202-037/60490